IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 53 OF 2001.

1. Confrarias de Fundo Reunido
de Igreja de S. Pedro,
duly represented by its members
of Committee namely:

2. Shri Numenio D'Souza,
Special Attorney of
Confrarias.

3. Shri Cajetan Fernandes,
Treasurer of Confrarias,
major, resident of S.
Pedro, Ilhas, Goa. ... Petitioners.

VERSUS

Shri Bruno Jose Dias,
alias Bruno Gregorio Dias,
s/o late Caetano Jose Dias,
major, Indian National,
r/o Santa Cruz, Ilhas, Goa,
through his Attorney
Mr. Babacier Dias, Government
Servant, major, married,
resident of Santa Cruz,
Ilhas, Goa. ... Respondent.

Mr. S.K. Kantak with Ms. Gouri Sardessai, Advocates for the Petitioners.

Respondent absent.

**CORAM: S. RADHAKRISHNAN.**

DATE: 8TH AUGUST, 2002.

ORAL JUDGMENT.

1. By this Civil Revision Application, the petitioners herein are challenging the Order dated 6th April, 2000, passed by the learned Civil Judge S.D., Panaji in Special Civil Suit No.210/87/A.

2. The brief facts are that the respondent herein who claims to be a tenant of the petitioners had filed the above Suit before the Court of Civil Judge S.D. at Panaji for a declaration of his title as the owner of the said land and also for a permanent injunction restraining the petitioners, their agents, servants, representatives, members of the Committee of Confrarias, or any other person or persons claiming through or under the petitioners from entering and interfering with the suit properties or plucking the coconut trees or removing the fruits from the fruit-bearing trees or cutting any tree from the suit properties, etc. By the said Suit the respondent had also prayed that the respondent's name should be included in the Survey Record as a tenant/lessee of the suit properties.

3. In the above Suit, the present petitioners had filed a written statement and thereafter an amended written statement by adding paragraph 3.A, contending that the Trial Court had no jurisdiction to entertain and dispose of the Suit. In view of the same, an additional issue was framed by the Trial Court as Issue No.1 as under :-

> " Whether the defendants prove that this court has no jurisdiction to entertain the suit. "

This Issue was considered by the Trial Court and by the aforesaid Judgment dated 6th April, 2000, the Trial Court found that the Court had jurisdiction to entertain the suit and had declared that the Court had jurisdiction.

4. The learned counsel for the petitioners herein strongly assails the judgment of the Trial Court on the ground that ex facie from the pleadings, it is clear that the Civil Court ought not to have entertained the suit at all. In that behalf, the learned counsel for the petitioners has brought to my notice the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. The relevant provision is Section 7 which clearly says that if any question arises whether any person is or was a tenant or should be deemed to be a tenant under this Act, the Mamlatdar shall, after holding an inquiry, decide such a question. He also brought to my notice provisions of Section 8-A under the aforesaid Act which reads as under :-

> "8-A. Relief in certain cases of threatened wrongful dispossession.
>
> -(1)Any tenant in possession of any land or

dwelling house who apprehends that he may be dispossessed contrary to the provisions of this Act, may apply in the prescribed manner to the Mamlatdar for an order safeguarding his right to possession.

(2) On such application, the Mamlatdar if he is satisfied on holding such enquiry as may be prescribed, that the applicant is entitled to continue in possession, shall, by order, direct the landlord or any person claiming through him to refrain from disturbing it otherwise than in accordance with law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the

Mamlatdar by affidavit or otherwise that the opponent threatens to dispossess the applicant, he may by order grant a temporary injunction restraining such dispossession or otherwise causing injury until the final disposal of the proceeding or until further orders. In all such cases the Mamlatdar shall, except where it appears that the object of granting the injunction would be defeated by delay, issue notice of the application to the opponent before granting an injunction.

(4) Any person dispossessing a tenant in contravention of an order made under sub-section (2) or (3), in addition to any other penalty to which he is subject, on application

> made by the tenant within thirty days of such dispossession, and notwithstanding anything to the contrary in any other provision of this Act, be summarily evicted by the Mamlatdar who shall thereupon restore possession to the tenant."

5. Learned counsel thereafter pointed out that the Civil Court is clearly prohibited from entertaining any issue arising out of the above which is explicit from Section 58, clause (2) of the Act which reads as under :-

> " 58-(2) Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the

> Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court. "

6. Over and above, the learned counsel for the petitioners has also pointed out the provisions in Section 18-A of the aforesaid Act which provides that on the the tillers' day every tenant shall, subject to the other provisions of this Act, be deemed to have purchased from his landlord the land held by him as a tenant and such land shall vest in him free from all encumbrance subsisting on the said day. There is no dispute as far as the tillers' day is concerned, for the purpose of this Section the tillers' day would be 28th April, 1976.

7. Learned counsel also brought to my notice pleadings in the plaint as filed by the respondent before the Trial Court. In paragraph 5 of the said plaint the respondent has categorically stated that the respondent is a lessee of the petitioners herein with regard to various suit

properties mentioned therein. There is a reiteration of the same stand in paragraph 6 wherein the respondent has pleaded the suit property belonged to the petitioners herein. In paragraph 7 also the respondent has pleaded that the petitioners had leased the suit property on a rent of Rs.300/- per year to the respondent.

8. In paragraph 16 again it is pleaded that the plaintiff is possessing the suit property as a lessee of the suit property. Ultimately in paragraph 17 the respondent has sought a declaration that the respondent should be declared to be the owner of the suit properties and that the petitioners herein should not dispossess the respondent except by due process of law. Finally in prayer (d) the respondent has prayed that his name should be included in the survey records as tenant/lessee of the suit property. In prayer (c) of the Suit the respondent has prayed that the respondent should be declared as a deemed purchaser of the suit property. Therefore the learned counsel for the petitioners contends that the Suit proceeds on the basis that the respondent was only a tenant and also that he is seeking a declaration to be a deemed tenant and also seeks a declaration to be the owner and for further reliefs that the petitioners herein ought not to disturb the respondent’s possession.

9. Shri Kantak, appearing on behalf of the petitioners, strongly contended specially in view of Section 58(2) of the Act that the Civil Court absolutely had no jurisdiction to entertain the above Suit inasmuch as Section 58(2) of the aforesaid Act clearly mentions that no court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar. The learned counsel further contends that in fact even the question of 'deemed tenancy' as contemplated under Section 7, it is only the Mamlatdar who can decide, as clearly spelt out in Section 7. Over and above, even if there was to be any apprehension of wrongful dispossession, it could have been ordered only with the intervention of the Mamlatdar as clearly laid down in Section 8-A of the aforesaid Act.

10. It is the contention of the learned counsel for the petitioners that if one were to read Sections 7 and 8-A along with Section 58(2), the Civil Court ought not to have entertained this Suit and ought to have rejected the same as ex facie not maintainable. The learned counsel contends that the Suit could not be maintainable at all before the Civil Court.

11. Shri Kantak contended that as far as Section 18-A is concerned, till date there is no declaration that the respondent has been declared as a 'deemed tenant' as per Section 7 which could only be done by the Mamlatdar and even the plaint proceeds on the basis that the respondent claims to be a tenant and, in fact, he has sought a declaration that he is a deemed tenant from the Civil Court. Under these circumstances, the learned counsel for the petitioners, states that unless and until the respondent is declared to be a 'deemed tenant' by the Mamlatdar in appropriate proceedings, there is no question of the respondent claiming to be the owner as per Section 18-A of the said Act.

12. The learned counsel for the petitioners also brought to my notice a judgment of this Court in **Smt. Jaya R. Deshprabhu and others v. Shri Surendra Anant Naik Dessai,** 1995 (2) Goa L.T., 305, wherein on the very precise issue, this Court has held that under Section 8-A only Mamlatdar is entitled to grant relief with regard to threatened wrongful dispossession and the Civil Court had no jurisdiction whatsoever to entertain any suit and in fact the Court has observed that in such a case the plaint ought to be rejected straightaway, inasmuch as the Civil Court had no jurisdiction at all.

13. The learned counsel for the petitioners, also brought to my notice another judgment of our High Court in the case of **Shri Jose Maria Florence Xavier Cassiano Luis alias Jose Luis Vaz v. Shri Vassudeo Budhu Morajkar,** reported in 1999 (1) Goa.L.T., 314 wherein it was sought to be contended that on the tillers' day the tenant must be construed to be a deemed purchaser. In that case also this Court has held that unless and until a tenant is declared to be a deemed tenant by the Mamlatdar, the question of the said person becoming a deemed purchaser on the tillers' day would not arise. Even in the said judgment, the learned Single Judge has referred to the judgment of **Jaya Deshprabhu and others vs. Surendra Dessai's** case and relying on the same had held that no Civil Court can entertain a Civil Suit specially in view of Section 8-A of the said Act which is a Code by itself.

14. Apart from the above, the learned counsel for the petitioners also brought to my notice the well known principle that the jurisdiction is decided only on the basis of pleadings in the plaint. In that behalf, he referred to the Apex Court judgment in **Abdulla Bin Ali and others v. Galappa and others,** reported in (1985) 2 S.C.C., 54 wherein the Apex Court has clearly held that there is no denying of the fact

that the averments made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement.

15. Under these circumstances, learned counsel for the petitioners, prays that the impugned order is totally unsustainable and ex-facie liable to be set aside in view of the clear and specific provisions of the aforesaid Act and in view of the aforesaid judgments.

16. The respondent is absent though served. Perused the impugned Order dated 6th April, 2000. The impugned order cannot be sustained in view of statutory provisions specially Sections 7, 8-A, 18-A r/w Section 58(2) which make it abundantly clear that the Civil Court had no jurisdiction to entertain the suit. As far as the issue of the respondent being construed as "deemed purchaser" unless and until the Mamlatdar decides the same under Section 7, the respondent cannot become a "deemed purchaser". The pleadings indicate that the respondent had claimed to be a deemed purchaser. The plaint proceeds on the basis that the respondent was a lessee of the suit property. Under the aforesaid facts and circumstances, the impugned order passed by the

learned Civil Judge S.D., Panaji, Goa dated 6th April, 2000 cannot be sustained at all and ex-facie contrary to law as indicated hereinabove.

17. Hence Civil Revision Application is made absolute in terms of prayer clause (b) and the Suit pending before the Trial Court also stands dismissed, for lack of jurisdiction.

S. RADHAKRISHNAN, J.

sl.